

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 11
)	
ASTROPOWER LIQUIDATING)	Case No. 04-10322 (MFW)
TRUST, f/k/a ASTROPOWER,)	
INC.,)	
)	
Debtor.)	
_____)	
)	
ASTROPOWER LIQUIDATING)	
TRUST, f/k/a ASTROPOWER,)	
INC.,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 05-50867
)	
XANTREX TECHNOLOGY, INC.;)	
MOSSADIQ S. UMEDALY; RAYMOND)	
JAMES LTD.; MERRILL LYNCH)	
ASSET MANAGEMENT; and)	
MERRILL LYNCH INVESTMENT)	
MANAGERS LIMITED,)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION¹

Before the Court is the Motion of Xantrex Technology, Inc., Inc. ("Xantrex") and Mossadiq S. Umedaly (collectively, the "Defendants") to Dismiss the Amended Complaint for Failure to State a Claim and the Response thereto filed by the AstroPower Liquidating Trust (the "Plaintiff"). For the reasons set forth below, the Court will deny the Motion.

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Fed. R. Bankr. P. 7052.

I. BACKGROUND

The relevant background and procedural history are stated in the Court's Opinion of December 22, 2005, AstroPower Liquidating Trust v. Xantrex Tech., Inc. (In re AstroPower Liquidating Trust), 335 B.R. 309, 315-19 (Bankr. D. Del. 2005).

Since that time, the Plaintiff has filed an Amended Complaint, removing the counts dismissed by the Court and naming the alleged third-party purchaser of the Debtor's Xantrex stock as an additional defendant. The Amended Complaint is similar to the original Complaint in all other relevant respects.

The Defendants filed the instant motion on February 9, 2006, and asked for oral argument. The Plaintiff opposed the Motion and the request for oral argument. After reviewing the parties' briefs, the Court concludes that oral argument is unnecessary. This matter is ripe for decision.

II. JURISDICTION

This is a core matter over which the Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(B) & (H). AstroPower, 335 B.R. at 322.

III. DISCUSSION

The Defendants contend that the Amended Complaint fails to allege any facts indicating that they were "transferees" of the

Debtor's property or that they benefitted in any way from the transfer. While they acknowledge that the Amended Complaint alleges a transfer of the Debtor's "Xantrex Stock directly to Xantrex" (§ 45), the Defendants argue that the remaining allegations make clear that Xantrex was a "mere conduit" for the transfer of the stock. See, e.g., Christy v. Alexander & Alexander Inc. (In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey), 130 F.3d 52, 57 (2d Cir. 1997) (holding that a "mere conduit" is not a "transferee"). Accordingly, even if an avoidable transfer occurred, the Defendants believe that dismissal is warranted under Rule 12(b)(6) because the transfer would not be recoverable from them under section 550(a) of the Bankruptcy Code.

The Plaintiff argues that the Defendants are barred from challenging the adequacy of the pleadings in light of the Court's earlier denial of Defendant RJL's motion to dismiss, which had raised the same issues.

The Court rejects this argument. That a complaint states a valid claim against one defendant does not mean it states a valid claim against all defendants.

The Plaintiff argues next that Xantrex's "mere conduit" argument is an affirmative defense that is properly raised in a summary judgment motion but not in a Rule 12(b)(6) motion to dismiss.

The Court agrees. For the purposes of this motion to dismiss, the Court must accept as true the Plaintiff's allegation that Xantrex received blank-endorsed stock from the Debtor. AstroPower, 335 B.R. at 332. The Defendants' assertion that Xantrex lacked dominion and control over this stock because it was contractually obligated to pass it along to the third-party purchaser, even if true, is not apparent from the face of the Amended Complaint. See, e.g., PBGC v. White Consol. Indus. Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("To decide a motion to dismiss, courts generally consider the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.").

The Plaintiff argues further that, accepting as true the allegation that the transfer of the stock was "for the benefit of the Defendants," the Amended Complaint states a valid claim.

The Court agrees. "Dismissal is appropriate only if it appears beyond doubt that the Plaintiff can prove no set of facts in support of its claim that would entitle it to relief."

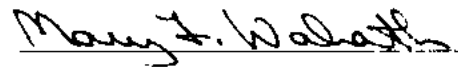
AstroPower, 335 B.R. at 332. It is conceivable that the Defendants benefitted in some way from the transfer of the Debtor's Xantrex stock. "To dismiss the [Amended] Complaint merely because it does not allege a specific benefit received by [the Defendants] would be inappropriate in light of the liberal

pleading standard applicable to avoidance actions brought by estate representatives." Id. at 334.

IV. CONCLUSION

For the reasons set forth above, the Court will deny the Defendants' motion to dismiss. An appropriate order is attached.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Mary F. Walrath", is written over a horizontal line.

Dated: April 19, 2006

Mary F. Walrath
United States Bankruptcy Judge